

b.) Remarks

Claim 98 has been amended in order to recite the present invention with the specificity required by statute. No new matter has been added.

In the July 23, 2008 Advisory Action, the Examiner notes there is nothing of record evidencing that “whey peptide” exclude “soy proteins”, citing U.S. Patent No. 5,550,166 as discussing “soy whey”.

Respectfully submitted, regardless of what terminology the ‘166 patent uses, there is no such thing as “soy whey”. That is, as well-understood in the art, the regular meaning of “whey” refers to the liquid from milk, which is of animal origin.

See the following dictionary definitions of ‘whey peptides’:

Whey -- a milk serum, separating as liquid from the curd after coagulation, as in cheese making.
Random House Unabridged Dictionary

Whey - the watery part of milk that remains after the formation of curds.
Compact Oxford English Dictionary;
New Oxford American Dictionary

Whey - the serum or watery part of milk that is separated from the coagulable part or curd, esp. in the process of making cheese and that is rich in lactose, minerals, and vitamins and contains lactalbumin and traces of fat.
Merriam Webster Medical Dictionary

It appears the ‘166 patent relied upon by the Examiner uses the term 'soy whey' to refer to the disparate liquid derived from soy after curds are removed, which are clearly of plant origin. In that regard, the ‘166 patentee devised this term in order to distinguish what the reference was talking about from the usual and regular meaning of "whey" as a milk component.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

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